

APPEAL NO. 041237
FILED JULY 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 15, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) that the claimant did not have disability; and (3) that the claimant did not sustain a compensable injury to her elbows on _____. The claimant appealed these determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded urging affirmance, and asserting that the claimant's appeal is untimely.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

A request for appeal is timely if it is mailed on or before the 15th day after the appellant receives the hearing officer's decision and if it is received by the Texas Workers' Compensation Commission (Commission) on or before the 20th day after the date of receipt of the hearing officer's decision. Section 410.202; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). Records of the Commission show that the hearing officer's decision was mailed to the parties on April 21, 2004. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is April 26, 2004. The claimant states in her appeal that she received the hearing officer's decision on May 6, 2004. In Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994, we stated "[w]here Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of [receipt established by Rule 102.5(d)]." In the instant case, the claimant gave no explanation as to why she received the hearing officer decision two weeks after it was mailed. The claimant's unexplained statement that she did not receive the decision until May 6, 2004, is insufficient to extend the period for filing a timely appeal. The 15th day after the deemed date of receipt of April 26, 2004, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was May 17, 2004. The claimant's appeal was postmarked on May 18, 2004, and her appeal was received by the Commission on May 26, 2004. The claimant's appeal was not timely filed with the Commission.

The decision of the hearing officer is final in the absence of a timely appeal. Section 410.169. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge